

DATE: April 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05502

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Robert Tuider, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has family members who live in the People's Republic of China (PRC), a country with a communist government. Applicant is 48 years old. He grew up in the PRC and immigrated to the United States in 1988 when he was 34 years old. He became a U.S. citizen in 2000. His wife became a U.S. citizen in 2001 as did his daughter. His 19 year old college student daughter immigrated with her parents when she was six years old. Applicant is gainfully employed here. Applicant mitigated security clearance concerns by evidence of his infrequent trips to the PRC for visitations, no financial interests in the PRC, no known weaknesses or vulnerabilities, his siblings are in private business and non-governmental employment, and his declared intent to report any improper contacts to security officials. Clearance granted.

**STATEMENT OF THE CASE**

On January 8, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personal security Guideline B (Foreign Influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated January 21, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was originally assigned to Administrative Judge Kathryn Braeman on February 7, 2003. It was reassigned to me on February 11, 2003 due to caseload considerations. A Notice of Hearing was issued on February 11, 2003, setting the hearing for March 12, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented one exhibit<sup>(1)</sup>

which was admitted into evidence. Applicant appeared and testified, presented two witnesses, and offered ten exhibits (2), all of which were admitted into evidence. I received the transcript (Tr.) of the hearing on March 20, 2003.

### **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.b., 1.c., and 1.d. of the SOR. He denied the allegation in subparagraph 1.a. of the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 48 years old, is married and has a 19 year old daughter who is a college sophomore studying chemical engineering. Applicant, his spouse, and his daughter are all naturalized United States citizens. Applicant attended graduate level college in the United States and received two master's degrees, one in physics and one in electrical engineering. He received his bachelor's degree in the PRC. He has worked as a software engineer since 1992 when he received his master's degrees. Now Applicant works for a defense contractor in the software development field. He is well regarded by his managers and his peers. (Applicant Exhibits A to I. Tr. 23-26, 35, 65, 66)

Applicant's father is deceased. His mother is 74 years of age and lives in the PRC. Applicant does telephone his mother every few weeks to check on her because she is in poor health. His siblings are married and work in private industry in the PRC and Applicant says they are not in the PRC government or its agencies. Petitioner last visited the PRC to attend his father's funeral in May, 2000. His wife's family is also involved in private business in the PRC. Applicant said he does not email his siblings because they do not have email and he is not in contact with them on a regular basis. (Tr. 47-52)

Petitioner owns a house and three cars. He donates money to local charities. His wife is a senior auditor for a major food company. He is invested with his company's stock company. Otherwise, he goes to work and then home. He describes his daily routine as pretty boring. (Tr. 56-58; Applicant's Exhibit J)

Applicant and his family use PRC visas with their American passports to go to the PRC. The PRC passports they had were stamped cancelled by the PRC consulate and corners were cut from the documents so the passports would not be usable. Applicant's passport was to expire in 2003 anyway. He cannot use that passport anymore because it has been rendered invalid. Applicant has only been back to the PRC three times since he came to the United States in 1988. Applicant has no property in the PRC, is not going to inherit any, and does not receive any compensation from the PRC government. Applicant testified he would report any improper contacts or requests from PRC agents to the appropriate security officials in his company. (Tr. 54, 55, 61-63, 70)

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

#### **GUIDELINE B: Foreign Influence**

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. Directive, ¶ E2.A2.1.2.1.

Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. Directive, ¶ E2.A2.1.3.1.

Contact and correspondence with foreign citizens are casual and infrequent. Directive, ¶ E2.A2.1.3.3.

Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Directive, ¶ E2.A2.1.3.5.

## **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

This case involves a Chinese (PRC) immigrant to the United States who came here for more education and a better life for himself and his family. He has attained his financial goal, and is well and fully invested by owning a home, three cars, and paying for his daughter to attend an excellent American university. His wife has a responsible and well paying job. He, his spouse, and his daughter became U.S. citizens in the past three years. His only contacts with his former homeland are frequent telephone contacts with his aging mother, and infrequent contacts with his siblings, their spouses, and his wife's family. None of them appear to be in the employ of the PRC government. His mother is 74 and retired. His siblings work in private industry or are married to private industry employees. Under the facts the only possible Disqualifying Conditions (DC) which might be applicable are 1 and 2. They are the key concern here and what vulnerabilities Applicant may have as a result of these familial relationships to disclose secret information to the PRC agents who routinely seek economic and business information to use in the PRC. However, DC 2 is applicable only to subparagraph 1.a. of the SOR, which alleges Applicant's wife is a citizen of the PRC, but the evidence clearly shows she is a United States citizen now after being naturalized in 2001. Therefore, that DC 2 vanishes.

But these are offset by the Mitigating Conditions (MC) 1, 3, and 5. The only foreign citizens with which he has any type of regular contact are his family and his wife's family, who do not appear to be agents of the PRC government. His contacts with his siblings are by mail or telephone infrequently, and since 1988 he has only returned to visit them in China three times.

A greater concern is the vulnerability he might have through is kinship with his aging mother in the PRC. Applicant attempted to address that concern by stating on the record twice he would report any attempts to obtain information from him to the appropriate security officials. He also should know he could lose all the wealth and security he has obtained in the United States in the past decade if he violates the law, in addition to any prison time if convicted of espionage.

Observing his demeanor during the hearing, and the pride with which he speaks of his accomplishments in the United States, I conclude Applicant knows he has more to lose than gain if he betrays the trust placed in him, and that he truly recognizes the value of his citizenship here, and would do nothing to endanger his citizenship by betraying it. Furthermore, Applicant has no financial interests in the PRC to counter-balance the financial prosperity he has accumulated in the United States, so none could be used to coerce him to disclose any classified information.

Therefore, the only remaining issue is his mother and whether he is vulnerable to influence through her to violate security regulations. It is difficult to know what a son in this situation would do if the PRC threaten his mother, but Applicant stated at the hearing he would report any approaches or threats. What more can be requested of a son than the assurance he will not be coerced and will report attempts to coerce, I do not know. I find Applicant to be sincere and credible in his statements, and therefore, I believe him.

After considering all of the evidence, and looking at the total person and facts surrounding this case, I can only conclude that the MC prevail. I can find nothing in the evidence in the record to show that it is not clearly consistent with national security considerations to renew Applicant's security clearance.

## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: For the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d.: For the Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Philip S. Howe

Administrative Judge

1. Government Exhibit 1: Applicant's security clearance application
2. Applicant Exhibit A: Applicant's naturalization certificate; Applicant Exhibit B: Spouse's naturalization certificate; Applicant Exhibit C: Daughter's naturalization certificate; Applicant Exhibit D: Applicant's U.S. passport; Applicant Exhibit E: Certificates of Completion for Master's Degree; Applicant Exhibit F: Master's Degree; Applicant Exhibit G: Master's Degree; Applicant Exhibit H: Letter of support; Applicant Exhibit I: Letter of support; Applicant Exhibit J: Applicant's donations